

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1604 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

SANTILAL KARSANDAS PAREKH

Versus

PATEL POPAT KANA DECEASED BY HIS HEIRS

Appearance:

MR JR NANAVATI for Petitioners

MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 17/11/2000

ORAL JUDGEMENT

1. This appeal is preferred by the original plaintiff challenging the judgment and decree passed in Special Civil Suit No. 64 of 1973 by learned Civil Judge, Senior Division, Gondal dated 12th October 1979, dismissing the suit. The plaintiff filed the suit for a

declaration that the sale deeds dated 15.6.1971 executed by deceased Popat Kana (original defendant no.1) in favour of defendants no. 2 and 3 are null and void and the suit land admeasuring 1244 sq.ft. (140 x 80 feet) is of the plaintiff and for recovery of possession of the suit land and for injunction restraining the defendants from making any construction on the suit land and directing them to remove the encroachment made by them on the suit land. The plaintiff also claimed damages to the tune of Rs. 300/- and prayed for payment of costs of the suit.

2. It is the case of the plaintiff that the property of Haji Ahmed Ayub was declared to be Evacuee Property and was registered as EP No. 36 consisting of a building with open plot of land to its west admeasuring 160 feet from east to west and 80 feet from north to south. The building stood on the land admeasuring 20 feet and open plot was admeasuring 140x 80 feet. Even though it was a compact property, the custodian of evacuee property sold the building and open plot separately by public auction on 11.4.1959. The house was sold to Satabai Lilaram and open plot was sold to Chelaram Khemchand. The sale certificate was issued in favour of Chelaram Khemchand on 11.4.1960 while the sale certificate in favour of Satabai Lilaram was issued on 2.7.1960. It is further the case of the plaintiff that thereafter Satabai demolished the superstructure and sold the plot to one Nanakram by sale deed dated 27.11.1962 and the said Nanakram sold it to Popat Kana, original defendant no.1 by sale deed dated 6.7.1964. Chelaram Khemchand sold his plot to Laxmichand Mulchand under the sale deed dated 25.5.1961 and Laxmichand Mulchand thereafter sold it to the plaintiff under the sale deed dated 8.8.1963. In substance, it was the case of the plaintiff that the deceased Popat Kana became owner of the plot admeasuring 20 x 80 feet on which the house was standing and the plaintiff became the owner of the plot of land admeasuring 40 x 80 feet which was an open plot of land to its west. The deceased Popat Kana divided the whole property in two parts and sold one part admeasuring 862 sq.yds. (97 x 80 feet) to the defendant no.2 under the sale deed dated 15.6.1971 and the other portion admeasuring 560 sq.yds. (63 x 80 feet) to the defendant no.3 under sale deed dated 15.6.1971. Thereafter, the defendants no. 2 and 3 made construction work even on the plot of land of the ownership of the plaintiff who made wire fencing by making demarcation on his plot of land. It is further the case of the plaintiff that the defendants no. 2 and 3, with the aid of the heirs of defendant no.1, removed the wire fencing and illegally made encroachment upon the land of the

plaintiff on 17.8.1973 causing damage of Rs. 300/-. In the circumstances, the plaintiff filed a suit as stated above.

3. The defendants no.2 and 3 filed their written statement Ex. 30 admitting that they had purchased the plot of land from the deceased Popat Kana on 15.6.1971 and since then, they are in possession of the suit plot and they had paid full consideration for the same to deceased Popat Kana. According to them, the suit land originally belonged to Meman Rahemtullah of Jetpur as owner. The original Lekh No. 6/45 is dated 19.8.1988 and it was admeasuring 3200 'Gaj' (160 x 80 feet) and the custodian of the Evacuee Property sold the said Government padtar land to Satabai under the sale certificate dated 2.7.1960. They contended that Vora Haji Ahmed Ayub was never declared to be evacuee and his property was never registered as EP No.36. They denied that the suit property was consisting of a building with open plot of land admeasuring 160 x 80 feet. They also denied that the building was standing on the plot of land admeasuring 20 x 80 feet and on open plot of 140 x 80 feet. According to them, Satabai obtained the whole property bearing E.P.No.36 under the sale certificate dated 2.7.1960. They denied the execution of sale deeds dated 25.5.1961 and 8.8.1963. They also denied that they made encroachment upon the suit land of the plaintiff as alleged.

4. The defendant no.1 filed his written statement Ex. 43 denying the averments made in the plaint.

5. On the basis of the pleadings, the learned judge framed necessary issues Ex. 44 and after considering the evidence on record, recorded a finding that the suit plot admeasuring 140 x 80 feet is not a part and parcel of E.P.No.36 and that the said plot was not sold separately from other built up portion admeasuring 26 x 80 feet from E.P.No.36. The learned judge also recorded a finding that the plaintiff is not the owner of the suit plot. In view of the same, the learned judge ultimately came to the conclusion that the plaintiff is not entitled to the declaration and injunction sought for and he is also not entitled to the possession of the suit plot.

6. Mr.J.R.Nanavati, learned Counsel appearing for the appellant- plaintiff, after taking me through the evidence on record, submitted that the learned judge has committed an error in misreading the sale certificates Ex. 73 and 76 and has further erred in law in not appreciating the boundaries mentioned therein. In the

submission of Mr. Nanavati, the property being E.P.No. 36 originally comprised of only one property and it was divided into two parts by sale deeds Ex. 73 and 76.

7. After closely scrutinising the oral as well as documentary evidence, it appears that Satabai Lilaram purchased the property in EP No.36 under sale certificate Ex. 73 dated 2.7.1960 for Rs. 2701/- and Chelaram Khemchand purchased the property described as plot on the back of EP No.36 under sale certificate Ex. 76 dated 11.4.1960 for Rs. 551/-. It appears that the property described in sale certificate Ex.76 is to the west of property described in sale certificate Ex. 73. The boundaries are mentioned in Ex. 76; towards east is shown as E.P.No.36, on the west, is shown as a road and on the north and south, it is also shown as a road. The boundaries mentioned in sale certificate Ex. 73 are to the effect that on the east, there is open land, on the west, it is shown as an open plot, on the north, it is shown as a road and on the south, it is shown as open plot of Haji Ahmed Ayub. It further appears that Satabai Lilaram sold her property to Nanakram by sale deed Ex. 74 dated 27.11.1962 and Nanakram sold it to deceased Popat Kana under sale deed Ex. 75 dated 6.7.1964. Popat Kana executed sale deeds Ex. 78 and Ex. 79 dated 15.6.1971 in favour of defendants no. 2 and 3 respectively. Chelaram Khemchand sold his property through his power of attorney holder to Laxmichand Mulchand under sale deed Ex. 76 dated 25.5.1961 and Laxmichand Mulchand sold it to the plaintiff under sale deed Ex.78 dated 8.8.1963. The measurements of the respective properties are not mentioned in the sale certificates Ex. 73 and 76. The measurements are also not mentioned in the sale deeds Ex. 74 and 75. However, it is clear that the measurements are mentioned in the sale deeds Ex. 79 and 80 executed by deceased Popat Kana in favour of defendants no. 2 and 3. The measurement of the whole property is clear from the Lekh Ex. 88 dated 19.8.1988 produced by the defendants no. 2 and 3 wherein the measurement of the whole property as 80 'Gaj' equivalent to 160 feet from east to west and 40 'Gaj' equivalent to 80 feet from north to south is mentioned. It is, therefore, clear that both the properties comprised in sale certificates Ex. 73 and 76 admeasure 160 x 80 feet.

8. It is the case of the plaintiff that the whole property originally belonged to one person who was declared as evacuee, but the custodian of the evacuee property divided the whole property in two parts; one consisting of a building portion admeasuring 20 x 80 feet

and the other portion consisting of an open plot of land admeasuring 140 x 80 feet and sold these two portions separately by two sale certificates Ex. 73 and 76. It is further the case of the plaintiff that his plot is situated to the west of the plot of deceased Popat Kana and the deceased Popat Kana sold plaintiff's plot to the defendants no. 2 and 3 because Satabai demolished the superstructure standing thereon. Mr. Nanavati, learned Counsel for the appellant submitted that deceased Popat Kana sold to defendants no. 2 and 3, the plot of land belonging to the plaintiff which is clear from the boundaries of the plot mentioned in Ex. 73, 74 and 75 which are common. It is further submitted that Popat Kana had become the owner of the built up portion of land admeasuring 20 x 80 feet and that the plaintiff had become the owner of the said land as well as open plot of land admeasuring 140 x 80 feet.

9. The plaintiff has examined himself at Ex. 72. He has stated in his evidence that one Haji Ahmed Ayub alias Taiyab was declared as evacuee and his property was registered as EP No. 36. He has stated in his evidence that the suit property originally belonged to one Meman Rehmatullah. He has stated that he does not know Meman Rehmatullah or Haji Ahmed Ayub and even the heirs of Haji Ahmed Ayub. The plaintiff received information from Ibrahim Haji Karim that Haji Ahmed had gone to Pakistan in 1948. The plaintiff has stated that Meman Rehmatullah was not declared as evacuee. According to the plaintiff, there was a house on the east of the suit land and there was foundation on the east when he purchased the suit land. On the east of the house, there was a way of 20 feet. On the west, there was a lane of 20 feet. On the north, there was a lane of 20 feet and on the south, there was padtar land. According to him, one 'Gaj' is equal to two feet.

10. Except the bare say of the plaintiff, no other document is produced by him showing that Haji Ahmed Ayub was the original owner of the land purchased by Satabai under sale certificate Ex. 73. The plaintiff has also not obtained any documents from the Office of the Custodian of E.P. showing that the suit land originally belonged to Haji Ahmed Ayub. Reading Ex. 76, it is also not clear that the property originally belonged to Haji Ahmed Ayub as there is no mention of the name of Haji Ahmed Ayub in the said document. Reading Ex. 76, it is also not clear that Meman Rehmatullah was deceased as evacuee. Thus, the plaintiff has failed to prove the identity of the land claimed by him. When the plaintiff has filed the suit for declaration and recovery of

possession of certain portion of land, it is for the plaintiff to indicate the identity of the land claimed by him either by means of sale deeds or by means of measurements. Unfortunately, the plaintiff has failed to prove the same. The boundaries shown in Ex. 79 disclose that on the east, there is a road of 90 feet, on the west, there is a lane of 20 feet, on the north there is a lane of 20 feet and on the south, there is a padtar land. The common boundaries are shown in Ex. 80 which tally with the boundaries mentioned in Ex. 88 which is a Lekh dated 19.8.1988 showing measurements of the whole property as 80 'Gaj' equivalent to 160 feet from east to west and 40 'Gaj' equivalent to 80 feet from north to south. It is, thus, clear that both the properties comprised in sale certificates Ex. 73 and 76 admeasure 160 x 80 feet. When there is a dispute about the area of land claimed by the plaintiff and when the plaintiff has failed to prove the extent of the area claimed by him by showing or indicating the identity of land, it is difficult to hold that the plaintiff is the owner of the disputed land and that the defendants have made encroachment. There is no positive evidence on record that Haji Ahmed Ayub was originally the owner of the suit property. The plaintiff has also no personal knowledge of the property in question.

11. In my opinion, the evidence adduced by the plaintiff is not sufficient and reliable to hold that there was any plot belonging to Haji Ahmed Ayub in the surrounding vicinity. The plaintiff, in my opinion, has failed to establish the title over the suit land since 1963. Therefore, in my opinion, the learned trial judge has given convincing reasons for arriving at the conclusion that the plaintiff has failed to prove that he is the owner of the suit plot. Suffice it to say that I am in total agreement with the reasonings of the learned trial judge.

12. In the result, I do not find any merit in this appeal and is dismissed. No order as to costs.

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